

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

**SELMA LONG,
Plaintiff,**

v.

5:20-cv-00634

~~-Civ. Action No. 20-C-238B-~~

**CRACKER BARREL OLD COUNTRY STORE, INC.
Defendant.**

NOTICE OF REMOVAL

Defendant Cracker Barrel Old Country Store, Inc. (“Cracker Barrel”), by and through its undersigned counsel, hereby removes the above-captioned case from the Circuit Court of Raleigh County, West Virginia, in which it is now pending, to the United States District Court for the Southern District of West Virginia, Beckley Division, under 28 U.S.C. §§ 1332, 1441 and 1446. As shown below, this Court has original jurisdiction over this matter pursuant to diversity jurisdiction under 28 U.S.C. §1332(a); venue is proper; removal is timely; the action is between citizens of different states; and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

As grounds for removal, Cracker Barrel states the following:

INTRODUCTION

1. On June 24, 2020, Plaintiff commenced this action in the Circuit Court of Raleigh County, West Virginia by filing a complaint and naming as the Defendant, Cracker Barrel Country Store, Inc. The state court action is styled *Selma Long v. Cracker Barrel Old Country Store*, Case No. 20-C-238-B. See Pl’s Compl., attached as Exhibit A.

2. Service was affected upon Cracker Barrel via the West Virginia Secretary of State on August 28, 2020.

3. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441 and 1446 on behalf of Defendant Cracker Barrel. This Court has jurisdiction over this matter under 28 U.S.C. § 1332 because the parties are of diverse citizenship and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs.

THE COMPLAINT

4. Plaintiff's Complaint alleges one count of negligence/gross negligence arising out of injuries Plaintiff sustained while visiting the Cracker Barrel store located in Beckley, West Virginia, on or about June 28, 2018.

5. The lone count of Plaintiff's Complaint alleges that Cracker Barrel breached the duty of care owed to Plaintiff by failing to maintain a reasonably safe premises for patrons. (Pl.'s Compl. ¶ 14).

6. As a result of this incident, Plaintiff claims that she has suffered "past, present and future physical pain and suffering, inconvenience and the loss of the enjoyment of life." (Pl.'s Compl. ¶ 18).

7. Plaintiff demands relief in the form of compensatory damages, past and future medical expenses, general damages for pain and suffering as well as punitive damages, attorney's fees and any other damages in an amount sufficient to compensate her for her losses. (Pl.'s Compl. ¶ 20-25).

GROUND FOR REMOVAL

A. DIVERSITY OF CITIZENSHIP

8. Plaintiff is a resident of Raleigh County, West Virginia. (Pl.'s Compl. ¶ 1).

9. Defendant Cracker Barrel is a publicly traded corporation organized under the laws of Tennessee with its principal place of business in Lebanon, Tennessee. For purposes of diversity

jurisdiction, a corporation is deemed to be a citizen in the state in which it is incorporated and the state where it has its principal place of business. *Hoschar v. Appalachian Power Co.*, 739 F.3d 163, 170 (4th Cir. 2014) (quoting 28 U.S.C. § 1332(c)(1)).

10. Therefore, diversity of citizenship exists between Plaintiff and Cracker Barrel because Plaintiff is a citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(2)(A).

B. AMOUNT IN CONTROVERSY

11. Plaintiff seeks damages for incurred past and present medical costs which total \$223,288.78. (Pl.'s Compl. ¶ 19). In addition to these damages, Plaintiff seeks punitive and compensatory damages for pain and suffering as well as attorneys' fees and costs.

12. Plaintiff's damages exceed the \$75,000.00 threshold established under 28 U.S.C. § 1332.

13. Because Plaintiff and Defendant are citizens of different states and Plaintiff's alleged damages exceed the amount in controversy requirement necessary for diversity jurisdiction, removal of this case is appropriate.

VENUE IS PROPER

14. The Circuit Court of Raleigh County, West Virginia is located within the United States Southern District of West Virginia. *See* 28 U.S.C. § 129(a). Thus, venue is proper in this Court as it is the district "embracing the place where such action is pending." 28 U.S.C. § 1441(a).

TIMELINESS OF REMOVAL

15. Pursuant to 28 U.S.C. §1446(b)(1), this Notice is timely as it has been filed within thirty days of service of Plaintiff's Complaint on Cracker Barrel.

PLEADING AND PROCESS

16. Per 28 U.S.C. § 1446(a), copies of all the process, pleadings and orders served upon or later received by Cracker Barrel are attached as Exhibit A. A copy of the docket sheet from the Circuit Court of Raleigh County, as of September 17, 2020, is attached as Exhibit B.

17. As required under 28 U.S.C. § 1446(d), Cracker Barrel is providing written notice of this Notice of Removal to Plaintiff, and a copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of Raleigh County.

WHEREFORE, notice is given that this action is removed from the Circuit Court of Raleigh County, West Virginia to the United States District Court for the Southern District of West Virginia, Beckley Division.

Cracker Barrel Old Country Store, Inc.

By counsel,



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CERTIFICATE OF SERVICE

I, Jason A. Proctor, counsel for Cracker Barrel Old Country Store, Inc., do hereby certify that on September 24, 2020, a true and exact copy of Defendant's *Notice of Removal* has been electronically filed with the CM/ECF system and has been served via U.S. mail, postage prepaid, on the following counsel of record:

Stephen P. New
Amanda J. Taylor
New, Taylor & Associates
114 Main Street
Beckley, West Virginia 25801



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